



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE461

Marine Mammals; Pinniped Removal Authority; Approval of Application

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce (NOAA).

ACTION: Notice of availability.

SUMMARY: NMFS announces approval of an application for a Letter of Authorization (LOA) from the states of Oregon, Washington, and Idaho for lethal removal of individually identifiable predatory California sea lions (*Zalophus californianus*) in the vicinity of Bonneville Dam to minimize pinniped predation on Pacific salmon and steelhead (*Oncorhynchus spp.*) listed as threatened or endangered under the Endangered Species Act (ESA) in the Columbia River in Washington and Oregon. This authorization is pursuant to the Marine Mammal Protection Act (MMPA). NMFS also announces availability of decision documents and other information relied upon in making this determination.

ADDRESSES: Additional information about our determination may be obtained by visiting the NMFS West Coast Region's website: <http://www.westcoast.fisheries.noaa.gov>, or by writing to us at: NMFS West Coast Region, Protected Resources Division, 1201 Lloyd Blvd, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson at the above address, by phone at (503) 231-2226, or by e-mail at, robert.c.anderson@noa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 120 of the MMPA (16 U.S.C. 1361, *et seq.*) allows the Secretary of Commerce, acting through the Assistant Administrator for Fisheries, and the West Coast Regional Administrator of NMFS, the discretion to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on salmonids that are either: (1) listed under the ESA, (2) approaching a threatened or endangered status, or (3) migrate through the Ballard Locks in Seattle. The authorization applies only to pinnipeds that are not: (1) listed under the ESA, (2) designated as depleted, or (3) designated a strategic stock.

In December 2006, NMFS received an application from the Idaho Department of Fish and Game, Oregon Department of Fish and Wildlife, and the Washington Department of Fish and Wildlife (collectively referred to as the States) requesting authorization under section 120 of the MMPA to intentionally take, by lethal methods, individually identifiable predatory California sea lions in the Columbia River, which were then having a significant negative impact on the recovery of threatened and endangered Pacific salmon and steelhead. As required under the MMPA, NMFS convened a Pinniped-Fishery Interaction Task Force (Task Force). The role of the Task Force is to recommend to NMFS approval or denial of the States' application along with recommendations of the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority. The Task Force must also suggest non-lethal alternatives, if available and practicable, including a recommended course of action. NMFS partially approved the States' 2006 request, issuing a LOA on March 17, 2008, and on March 24, 2008, NMFS published a notice in the **Federal Register** (73 FR 15483).

Shortly after NMFS issued the LOA, the Humane Society of the United States (HSUS) filed a lawsuit in the U.S. District Court in Oregon, alleging that NMFS' LOA violated section 120 of the MMPA and the National Environmental Policy Act (NEPA). In November 2008, the district court issued an order upholding NMFS' approval of the lethal removal program and its evaluation of impacts under NEPA. Plaintiffs appealed to the Ninth Circuit Court of Appeals which declined to halt the removal program while the appeal was pending. Subsequently, the Ninth Circuit vacated and remanded the LOA to NMFS in November 2010 (*Humane Society of the United States, et al. v. Locke*, 626 F.3d 1040 (9th Cir. 2010)). In response to the Ninth Circuit Court's 2010 decision, the States submitted a new request for lethal removal authorization on December 7, 2010. NMFS considered the request and new information available since its prior authorization, including the Task Force's recommendations. NMFS again authorized lethal take, under similar conditions to the 2008 authorization (albeit with modifications), issuing a new LOA on May 13, 2011. HSUS again filed suit this time in federal court for the District of Columbia, alleging, among other things, that NMFS had not followed procedural requirements under MMPA section 120 prior to issuing the new authorization (including public notice and comment on the States' application). In coordination with the States, NMFS revoked the May 13, 2011, authorization on July 22, 2011, and HSUS voluntarily withdrew their lawsuit.

On August 18, 2011, the States submitted a new request for lethal removal of California sea lions at Bonneville Dam under substantially the same conditions as the prior authorizations. On March 15, 2012, NMFS issued a LOA to the States. In renewed litigation by HSUS this LOA was upheld in district court on February 15, 2013, and later affirmed by the Ninth Circuit Court of Appeals (*Humane Society of the US v. Bryson*, 924 F.Supp.2d 1228 (D. Or., 2013); *HSUS v. Pritzker*, No. 13-35195 (9th Cir., 9/27/13)). The 2012 LOA expires on June 30, 2016.

On January 27, 2016, NMFS received an application from the States to extend the 2012 LOA through June 30, 2021. The States are not requesting any changes or modifications to the terms and conditions of the 2012 LOA. Pursuant to the MMPA, NMFS determined that the application contains sufficient information to warrant convening the Task Force. On March 28, 2016, NMFS published a notice in the **Federal Register** (81 FR 17141), announcing receipt of the States' application, and soliciting public comments on the application and any additional information that NMFS should consider in making its decision. On May 31, 2016, NMFS reconvened the Task Force at a meeting that was open to the public, during which it reviewed the States' application, public comments on the application, and other information related to sea lion predation on salmonids at Bonneville Dam. The Task Force completed and submitted its report to NMFS on June 22, 2016. Thirteen of the fourteen members recommended that NMFS approve the States' extension request, with one member dissenting. All decision documents, including a copy of the new LOA, are available on NMFS's West Coast Region web page (see **ADDRESSES**).

Findings

As required under section 7(a)(2) under the ESA, NMFS completed formal consultation, and in accordance with NEPA, NMFS completed a supplemental environmental assessment (EA) to the 2008 EA with a finding of no significant impact. In considering a state's application to lethally remove pinnipeds, NMFS is also required, pursuant to section 120(b)(1) of the MMPA, to determine that individually identifiable pinnipeds are having a significant negative impact on the decline or recovery of at-risk salmonid fishery stocks. Based on these requirements, considerations, and analyses, NMFS has determined that the requirements of section 120 of the

MMPA have been met and it is therefore reasonable to issue a new LOA to the States for the lethal removal of individually identifiable predatory California sea lions through 2021.

Dated: June 30, 2016.

Nicole R. LeBoeuf,

Acting Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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